IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.1085/2007.
In
S.B. CIVIL WRIT PETITION NO.6440/2003.

Jaipur Vidyut Vitran Nigam Ltd. & Ors.
Vs.
Nathu Ram

Date of Order:- November 19, 2007.

HON'BLE THE ACTING CHIEF JUSTICE MR.RAJESH BALIA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Sanjeev Prakash Sharma for the appellants.
Mr. Hanuman Choudhary for the respondent.

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BY THE COURT(Per Hon'ble Mr.Rajesh Balia, ACJ):

We have heard learned counsel for the parties.

2) The only issue which arises in this appeal is about the emoluments to which the respondent-petitioner is entitled to as a result of his reinstatement on having been acquitted of the criminal charge in appeal, whereas on conviction by the trial court, his services have been brought to an end.

3) The facts necessary for the present purpose are that respondent-petitioner was suspended in November, 1979 as he was subjected to criminal trial. Trial ended in conviction; consequently, the services were terminated on 22/12/1982. The appeal against conviction was allowed by the appellate court on 15/12/1997 and the respondent-petitioner was acquitted of the charges.

4) As a result of his acquittal, the appellants reinstated the respondent-petitioner w.e.f. 15/12/1997 i.e. to say the date of acquittal and his emoluments were paid from that date. However, this resulted in break in service of 15 years. This led to filing of the writ petition by the respondent-petitioner as he has retired on 31/5/2003.

5) The learned Single Judge allowed the writ petition relying on the Circular issued by the Rajasthan State Electricity Board dated 3/9/1975. The present appellants-Corporation has come into existence as as restructure of Power production and distribution system by dissolving the Board and incorporated separate companies for the purpose.

The appellants adopted the rules, regulations and directions issued by its predecessor until it was to frame its own rules.

The Circular issued by the then RSEB dated 3/9/1975 dealing with the situation like the present one clearly indicate the entitlement of the reinstated employee.

It in substance directed that if no appeal is preferred against the order of acquittal and no departmental enquiry is to be held, the formal order should be made setting aside the previous orders of dismissal, removal and compulsory retirement and reinstating him in service. More particularly, it was envisaged that that period between the date of dismissal and the date on which he resumes duty should be dealt with under Regulation No.41 of the Rajasthan State Electricity Board Employees Service Regulations and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement. For the period between the date of dismissal to the date of acquittal, it provides that incumbent should not be

allowed pay and allowances less than what would have been admissible to him during the period he remained under suspension. In other words, during the intervening period he remained out of employment, in the first instance he is to be paid subsistence allowance payable during suspension. It is also envisaged in the relevant rules that where the competent authority holds that the employee has been fully exonerated or in the case he remained under suspension, the employee shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.

6) Relying on the aforesaid Circular governing the terms & conditions of the service of the appellants, the learned Single Judge disposed of the writ petition with the following directions:-

> “In view of the above, the respondents are directed to make payment of pay and allowances to the petitioner, not less than what would have been admissible to him had he remained under suspension from the date of termination to acquittal in criminal case. The said period from the date of termination to the date of acquittal shall be treated as spent on duty without any break and the respondents are further directed to fix pay of the

> petitioner in the Revised pay Scales of 1981, 1986, 1989 and 1996 and further consider his case for grant of selection scale. Appropriate orders shall be passed within a period of three months from today."

7) It will be pertinent to mention here that in the light of the aforesaid Regulations, the order which has been passed by the appellants while reinstating the respondent-petitioner on 2/6/1998 reads, as under:-

> "The period of suspension i.e. from 30.11.79 to 28.12.1983 and from 15.12.97 till his date of joining duty in compliance to this order shall be treated as period spent on duty for all purposes and full pay and allowances for this period shall be allowed to him."

From the aforesaid order dated 2/6/1998, it is apparent that for the period appellants treated the respondent-petitioner on duty, no amount was sought to be deducted by them from full emoluments for any period. However, it is also apparent that the appellants failed to take notice of the intervening period from 28/12/1983 to 15/12/1997. The respondent-petitioner shall be

treated in continuity from the date of his termination till the date of his reinstatement.

8) The learned Single Judge has shown consideration for the appellants' considering that the respondent-petitioner has not discharged his service during that period and he confined amount of emoluments payable to the petitioner only to subsistence allowance in terms of first part of the Circular which we have referred to above. The order being apparently in consonance with it, shall be treated in accordance with law governing the terms and conditions of an employee of the appellants.

9) In the circumstances, no interference is called for in the matter.

The appeal is dismissed.

(MOHAMMAD RAFIQ), J. **(RAJESH BALIA) Actg.CJ.**

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